

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 23493 of 2005****With****CIVIL APPLICATION No.586 OF 2006****With****CIVIL APPLICATION No.68 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**
 - 2 To be referred to the Reporter or not ? **-No.**
 - 3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**
 - 5 Whether it is to be circulated to the civil judge ? **-No.**
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MANOJBHAI SIDABHAI KUVADIA - Petitioner(s)**Versus****STATE OF GUJARAT THR' DY.SECRETARY & 3 - Respondent(s)****Appearance :**

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MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
MR JITENDRA MALKAN for Respondent(s) : 4,
M IA SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 27/01/2006****ORAL JUDGMENT**

1.Manojbhai Sidabhai Kuvadia, petitioner-detenu has filed

this habeas corpus petition under Article 226 of the Constitution of India challenging the detention order dated 15/11/2005 passed by the District Magistrate, Junagadh, detaining authority under the provisions of PBM Act as being illegal, invalid, null and void, arbitrary, suffers from total non application of mind and violative of Articles 14, 21 and 22 of the Constitution of India. Petition has been filed on 5/12/2005. On 6/12/2005, this Court has issued Rule which was returnable on 26/12/2005. On behalf of respondents, Mr.L.R.Pujari, learned APP appears. So, with consent of parties, matter has been taken up for final hearing to this Court. Mr.MIA.Shaikh, learned advocate appears for the Union of India.

2.Mr.H.R.Prajapati, learned advocate with Mr.M.R.Prajapati, learned advocate who appears for the petitioner has stated that though there are number of grounds, the learned advocate has confined to only one ground namely illegible documents. The learned advocate for the petitioner has stated that when the authority has supplied the documents, some of them are illegible and therefore right of the petitioner to make effective representation is violated. The learned

advocate for the petitioner has invited my attention to page 72, 73, 74 and 75 and some other pages. The said pages of the documents are illegible. The learned advocate has submitted that this is failure on the part of the detaining authority to supply legible copies of the documents. The detenu has right under Article 22(5) of the Constitution of India to have legible copies of the documents to enable the detenu to make effective representation in this behalf. For the same, the learned advocate has relied upon the judgment of the Division Bench of this Court (Coram:J.U.Mehta and S.M.Soni, J.J.) in the case of Mulchandbhai Sobharajmal Ganvani v. The Secretary to Government of Gujarat and others, reported in 1991 (1) GLR 421 where the Division Bench of this Court has relied upon the judgment of the Hon'ble Supreme Court in the case of Smt.Dharmishta Bhagat v. State of Karnataka, reported in 1989 Supp.(2) SCC 155 wherein the Hon'ble Supreme Court has observed that it is imperative that the detaining authority must serve grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention, and referred to in the list of documents accompanying the grounds of

detention in order to enable the detenu to make effective representation to the advisory board as well as to the detaining authority. The Division Bench has thereafter held that hence failure on the part of the detaining authority to supply legible copy of the said relevant documents to the detenu for making an effective representation infringed the detenu's right under article 22(5) of the Constitution of India.

3.It may be noted that copies of the said illegible pages of the documents were shown to Mr.L.R.Pujari, learned APP and he has also conceded that the said pages of the documents are illegible.

4.The learned counsel for the petitioner has relied upon above referred judgments of the Hon'ble Supreme Court and the Division Bench of this Court in support of the contention of the illegible documents. The authority may not supply this type of illegible documents. In view of the same, the contention raised by the petitioner is required to be accepted.

5.The learned advocate for the petitioner has relied upon the judgment of the Hon'ble Supreme Court and Division

Bench of this Court. He has also relied upon the judgment in the case of Kantilal Mathurdas Dave v. State of Gujarat in Sp. Civil Application No.24429 of 2005 decided today by this Court (Coram:K.M.Mehta, J.).

6.In view of the same, petition is allowed. Order of detention dated 15/11/2005 passed by the District Magistrate, Junagadh is quashed and set aside. Manojbhai Sidabhai Kuvadia, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

7.In view of main matter is disposed of, Civil Application No.586 of 2006 and Civil Application No.68 of 2006 for temporary release is not required to be considered. Both do not survive. Civil Applications are withdrawn at this stage. Therefore, both the Civil Applications are disposed of accordingly.

(K.M.MEHTA, J.)

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